

# School Law and Technology: An Update Fall 2011

EDLD 5344 School Law

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Portions Adapted from National School Boards Association Legal Department

# Web Conference Overview

- Staff Use
  - LA law
  - VA guidelines
  - MO law
  - Teacher misconduct and discipline
  - Teacher free speech
  - District web sites
- Student Use
  - Broadband Act
  - First Amendment cases
  - Cellphone searches
  - Private devices on school campus
  - Filtering
- Bonus! Recent Tech Happenings
  - Internet Streaming of athletic events
  - Accessibility of e-readers
  - Cloud storage of records

# Staff Use



- Inappropriate teacher interactions with students
- Public/parents/co-workers/students viewing inappropriate content

# Louisiana Clamps Down on Electronic Communication Between Teachers and Students

## + Louisiana House Bill 750

1. Requires city/parish/local public school board to develop and implement policy regarding electronic communications between employee at a school to a student at that school.
2. Definition must include wide range of means



# LA Law (2009) cont'd

## + Policy must:

3. Require that all electronic communications by employee to student at same school relative to the educational services provided to the student use a means provided/made available by the school system;
4. Prohibit use of that system to communicate with student for purpose not related to ed services **except with immediate family member if authorized by school board policy**;
5. Specify that the occurrence of any electronic communication by employee to student at same school or vice versa using means other than school's **shall be reported** by the employee;
6. Specify that failure to comply may constitute willful neglect of duty
7. Provides immunity to school board and individual members for any electronic communication by an employee to a student that is prohibited by the law.

# Calcasieu Parish School Board Policy Lake Charles, Louisiana

- + Employees must report, at the first opportunity available, *any* student-initiated communication that may be construed as inappropriate.



# Texas Cyberlaw

## Tx. Penal Code §

33.07





# VA DOE Guidelines

- + Original draft guidelines restricted teacher communication with students via text, social networking
- + 75% of 79 comments received from student, teacher, administrator groups and individuals said the draft guidelines were too restrictive
- + Final guidelines are more general, but say local school boards should develop and enforce clear and reasonable policies stating an intention to prevent sexual misconduct and abuse and governing the interaction of students and employees/volunteers.

[http://www.doe.virginia.gov/boe/guidance/safety/prevent\\_sexual\\_misconductabuse.pdf](http://www.doe.virginia.gov/boe/guidance/safety/prevent_sexual_misconductabuse.pdf)



# MO “Facebook Law”

- + Signed into law July, 2011
- + Required school districts with substantiated allegations of sexual misconduct by an employee to disclose it if contacted for a reference by another district.
- + AND
- + Required school districts to adopt policies re: teacher-student communications, including the following prohibition:
- + **“No teacher shall establish, maintain, or use a non-work-related internet site which allows exclusive access with a current or former student.”**

# MO “Facebook Law” – Suit

- + August 19, 2011 - Teachers’ filed a petition asking Missouri circuit court to enjoin the enforcement of one provision – the communication restriction.
- + August 24, 2011 - The circuit court granted it.
- + The governor, citing confusion created by the law, then announced he would put the repeal of the policy requirement and this communication restriction on the agenda for the fall legislative session.
- + September, 2011 - Both houses of MO legislature voted to repeal the offending sections.

# The MO court's reasoning

- + The court enjoined enforcement of the prohibition on teachers' use of internet sites that allow access with a current or former student.
- + The teachers had a good constitutional position – the law had a serious chilling effect on permissible speech protected by the 1<sup>st</sup> Amendment. The evidence showed teachers used social networking sites extensively to communicate with students. Often it was the primary, or only, method. “The breadth of the prohibition is staggering.” It would even apply to parent-child communications.

Would the LA law fare  
better under the MO  
court's analysis?

# Answer: Yes

- + Does not restrict communications via outside sites; just requires reporting
- + Allows communication via school site for non-educational purpose among immediate family members if board authorizes

But . . .

- + What if reporting becomes burdensome to other rights – familial relationships, free exercise
- + What if the board does not authorize the immediate family exception?

# Court decisions

- + *City Sch. Dist. City of New York v. McGraham*, 905 N.Y.S.2d 86 (App. 2010) – Court upheld hearing officer's award of 90-day suspension and transfer rather than termination of teacher who carried on inappropriate (though not overtly sexual) email exchange with student and posted anonymously about her feelings online. District asked court to overturn, based on public policy. Court decided penalty not disproportionate to the charges, not so lenient as to be arbitrary and capricious. Hearing officer had noted mitigating factors – remorse, seeking treatment, cutting off communications.

# The inappropriate interactions with students scenario:

Parents complain that the girls high school basketball coach is sending players inappropriate text messages and making inappropriate comments. There is a rumor that the coach is having a sexual relationship with a student. After a second texting incident (in which the coach was cleared) and another rumor of the relationship – confirmed by 2 students -- surfaced, coach was suspended. Coach pled guilty to felony sexual assault.



# Coach – Student Relationship

- + Inappropriate text messages and vague rumors did not constitute actual knowledge by principal of sexual abuse. Principal entitled to qualified immunity.
- + Principal was the “appropriate person” whom, if she had actual knowledge and was deliberately indifferent, district could be liable. Because she did not have actual knowledge, no district liability.
- + *Doe v. Flaherty*, No. 09-2535 (8<sup>th</sup> Cir. October 19, 2010).

# The inappropriate content scenario – Part I:

- ▶ An elementary student brings to the attention of Superintendent that a photograph of high school teacher A posing in a sexually suggestive manner next to a male stripper has been posted on Facebook.
- ▶ Upon further investigation Superintendent learns that A did not post this picture on Facebook. Superintendent also learns that teacher B was present when this photograph was taken but was not in any pictures that Superintendent is aware of.

# Teacher A and Teacher B

- + What did the district do?
- + Teacher A: 30 day suspension
- + Teacher B: disciplinary letter
- + ACLU and Teacher A filed suit and district settled for \$10,000 + \$4,000 in backpay.
  - + ACLU: "She had nothing to do with these pictures going up. It's all protected activity. It's all innocent activity."

# What is the real problem here?

- + Having a stripper at one's home?
- + Having one's photo taken?
- + Having the photo made publically available?
- + Only the public availability makes this a problem for a teacher. Suddenly private, legal behavior is connected to the school environment.

# The inappropriate content scenario – Part II

- + Parents complain to school administration that elementary teacher has criticized her students on Facebook:
  - + *"Frightfully dim,"*
  - + *"Rat-like,"*
  - + *"Am concerned your kid is going to open fire on the school,"*
  - + *"I hate your kid,"*
  - + *"Seems smarter than she actually is."*

# Is this an easier discipline case?

- + Probably.
- + Closer nexus to the school environment
- + Likely to violate district policy
- + Arguably falls under state teacher dismissal statute:
  - + “unbecoming conduct, or other just cause”
- + Teacher’s attorney argued to the media that this was like talking over the fence to one’s neighbor “on her own time and to her friends.”
- + Courts are struggling to decide if it’s more like a private conversation or a public sign.

# What can you do?

- + Discipline – follow traditional analysis, according to your state statute.
- + Easy case: illegal activity – use of illegal drugs, child pornography, purchasing alcohol for minors
- + Hard case: stupid activity. What is the standard in your state? Are teachers to be role models? Is there a nexus to the teacher's employment, making it hard for him/her to perform her job?



# What conduct/speech is protected under the First Amendment?

- + Teachers may speak as a citizen on matters of public concern (*Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968); *Connick v. Myers*, 461 U.S. 138 (1983)) AS LONG AS
- + Courts will weigh the teacher's interest as a citizen in commenting on matters of public concern outweighs the interest of the school district in promoting the efficiency of its operations. (*Pickering*)
- + When a teacher speaks pursuant to his job duties, the speech is not protected. (*Garcetti v. Ceballos*, 547 U.S. 410 (2006)) But be careful!

# First Amendment Fact Scenarios

Teacher and Superintendent complain on separate blogs about district budget cuts.

- + Who is likely protected by the First Amendment?
- + Teacher: Yes (not part of his job)
- + Superintendent: No (very likely part of her job to advise the board regarding the budget)

## First Amendment Fact Scenarios, cont'd

Instructional coach bashes co-workers, including someone she was coaching, on her public blog.

+ Court assumed without deciding that her speech was of public concern, but the disruption caused was “significantly deleterious,” so no 1<sup>st</sup> Am. protection.

*Richerson v. Beckon*, 337 Fed.Appx. 639 (9<sup>th</sup> Cir. 2009).

## First Amendment fact scenarios, cont'd

Teacher engages in peer-like interactions with students on social networking site.

+ The court found the interactions to be disruptive to school activities, thereby warranting termination (no 1<sup>st</sup> Am. protection).

*Spanierman v. Hughes*, 576 F.Supp.2d 292 (D. Conn. 2008).

*Johnson v. Poway Unified Sch. Dist.*, No. 10-55445  
(9th Cir. Sept. 13, 2011)

- + The teacher's speech (banners ) owed its existence to his position as a teacher. "[B]ecause of the position of trust and authority they hold and the impressionable young minds with which they interact, teachers necessarily act as teachers for purposes of a Pickering inquiry when at school or a school function, in the general presence of students, in a capacity one might reasonably view as official." In the panel's words: "Johnson took advantage of his position to press his particular views upon the impressionable and 'captive' minds before him."

“Because the speech at issue  
*owes its existence* to  
Johnson’s position as a  
teacher, Poway acted well  
within constitutional limits.”

If a district keeps all teacher-student communications on a school system, what if the teacher espouses religious beliefs?



If you are in the 9<sup>th</sup> Circuit, consider:

- + Does the speech at issue owe its existence to the teacher's position as a teacher?
- + If so, it may be regulated as other curricular speech is, but FOLLOW POLICIES, and BE FAIR. Document Establishment Clause concerns and be assure that policies are applied equally.

# Student Use



## Federal Law

- + The Broadband Deployment Act, which is incorporated in the *Protecting Children in the 21st Century Act*, requires schools receiving e-Rate funds to teach students about online safety, cyber bullying, and sexual predators.

# Why Focus on Internet Safety?

- + Today, 8-18 year-olds devote an average of 7 hours and 38 minutes (7:38) to using entertainment media across a typical day (more than 53 hours a week). And because they spend so much of that time 'media multitasking' (using more than one medium at a time), they actually manage to pack a total of 10 hours and 45 minutes (10:45) worth of media content into those 7½ hours.

+ Kaiser Family Foundation 2010

# Is this a Problem?

- + Nearly three-quarters of teens have an online profile on a social networking site, where many teens have posted photos of themselves and their friends, among other personal information.
- + About one in five teens have engaged in sexting – sending, receiving, or forwarding sexually suggestive nude or nearly nude photos through text message or email – and over a third know of a friend who has sent or received these kinds of messages.
- + Cyberbullying is widespread among today's teens, with over one-third having experienced it, engaged in it, or know of friends who have who have done either.

## There's More.....

- + A study released March 2008 indicated that 64% of students admitted to plagiarizing from the internet (School Library Journal)
- + 49% of teens surveyed were not familiar with the rules and guidelines for downloading content from the Internet (music, art, images, etc.)
- + 57% of those unfamiliar with the laws, said downloaders should be punished. (Microsoft, Feb. 13, 2008)

# In the News....

## DAILY NEWS | US/World News

HOME | AUTOS | REAL ESTATE | JOBS | CLASSIFIEDS | SHOP | BUY TICKETS | CONTESTS

NEWS | SPORTS | GOSSIP | ENTERTAINMENT | LOCAL | OPINIONS | LIFESTYLE  
NY CRIME | POLITICS | US/WORLD NEWS | HEADLINES/ARCHIVES | COLUMNIST

### Megan Meier's mom testifies in MySpace cyber-bullying trial

THE ASSOCIATED PRESS

Thursday, November 20th 2008, 2:49 AM

**LOS ANGELES** - The grieving mother of a Missouri girl told a jury Wednesday how her daughter hanged herself with a belt after receiving cruel messages on her MySpace account, some of which were from a boy whose identity was later revealed to have been invented by a neighbor.

Tina Meier recounted how "Josh Evans" interacted online with her 13-year-old daughter, Megan, during the first day of the trial against Lori Drew, who is accused of taking part in the Internet hoax that prosecutors say led to Megan's suicide.

Meier said after a name-calling exchange between Megan, "Josh,"



## State action on cyber-bullying

### Teens arrested over web bullying

Two teenagers have been arrested and reprimanded by police for "cyber bullying" on a young people's website.



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### Online bullying compels states to act

Critics question whether legislation can curb kids' bad behavior



Toby Talbot / AP

By Justin M. Norton

Associated Press

## LOCAL NEWS

### Bullying gone too far

John Halligan shows the V devoted to his son, Ryan, Underhill, Vt. Ryan, bullier for months online, killed h

## Cyber bullies could face penalties

MSN TECH AND GADGETS



# Educator Resources

<http://cybersmart.org/>

- + Free K-12 Curriculum (scope and sequence available)
- + Offers online professional development – minimum 20 people, charge
- + Reproducible student pages
- + 5 units → S.M.A.R.T. – (Safety, Manners, Advertising, Research, and Technology)
- + Aligned to the NETS and information literacy standards
- + Mix of online and offline activities



# Student Off-Campus Online Speech

- + Four federal appellate court decisions this year
- + At least one will file a petition for certiorari; others likely.
- + District won 2; student won 2
- + It is a crucial issue for schools, so NSBA is filing an amicus brief in support of the cert. petition in one case in which the school district lost

# *Tinker* Review:

- + Public schools may regulate student speech if it is:
  - + *Tinker* (1969)
    - + “Material and substantial disruption” or reasonable forecast thereof
    - + “Impinge upon the rights of others”
  - + *Hazelwood* (1983)
    - + School-sponsored speech
  - + *Fraser* (1987)
    - + Lewd or vulgar speech
  - + *Morse* (2007)
    - + Illegal drug-related speech

# Tinkering with *Tinker*

- + Courts have repeatedly, though reluctantly applied *Tinker* to off-campus speech.
- + Courts and attorneys have come to refer to the “nexus” between the behavior and the school.
- + Courts tend to focus on *Tinker*’s “disruption” prong and pay little attention to the “rights of others” prong.

## What **off-campus** student speech may public school officials regulate?

- + Courts are trying to figure that out, especially for off-campus **online** speech.
- + Off-campus speech that affects the school environment through a substantial disruption or reasonable forecast thereof is likely to be analyzed under the *Tinker* standard, unless it's a "true threat."
- + But many nuances are not clear:
  - + What if the speech does not affect the school as a whole, but just one student?
  - + How much disruption is enough?
  - + What about *Fraser*? It wasn't off-campus either!

# *Doninger v. Niehoff*, 527 F.3d 41 (2d Cir. 2008)(*Doninger I*)

- + Avery Doninger was prevented from running for Senior Class Secretary after she posted an offensive blog entry calling school officials “douche bags” for “cancelling” Jamfest.
- + Court decided that it was reasonably foreseeable the entry would be seen by school community and would substantially disrupt the school environment.
- + So no violation of First Amendment; no injunction to stop the school from disciplining.

## *Doninger II*, 642 F.3d 334 (2d. Circuit 2011)

- + After more discovery, the court looked at all the evidence, and ruled in favor of immunity for the school employees:
  - + Administrator's judgment and Avery's speech might be disruptive was "objectively reasonable."
  - + The law was not clearly established that Avery had First Amendment right not to be prohibited from running for class officer because of *offensive* off-campus speech that pertained to a school event, invited students to act, and reasonably foreseeable that it would come on campus and to the attention of school authorities.

# *Kowalski v. Berkeley County Sch.*, No. 1098 (4th Cir., 2011)

- + Middle school cheerleader elected “Queen of Charm” creates a Facebook page from her home computer called “S.A.S.H.” Or “Students Against Sluts Herpes”. Targets a girl named Shay . Pictures are posted by another student showing Shay with red dots on her face and an “enter at your own risk” sign over her privates. Shay won’t come to school. School investigates and disciplines. No evidence Facebook accessed from campus
- + The school district had authority under *Tinker’s* substantial disruption standard to discipline the student for speech that originated off-campus because, given the reach of the Internet, it was reasonably foreseeable that the speech would reach the school.



## *D.J.M. v. Hannibal Public School District, No. 10-1428* (8th Cir. Aug. 1, 2011)

- D.J.M. sent instant messages to a friend about getting a gun and shooting other students a school. He claimed his suspension violated the First Amendment .
- Not only true threats (reasonable recipient would have interpreted the threat as serious and threat was communicated to a third party), but also:
- Substantial disruption
  - Was reasonably foreseeable the message would reach campus
  - Substantial disruption – parents asking district about security measures—district had to deal with these concerns and put safety measures in place

# *J.S. v. Blue Mountain Sch. Dist.* (3d Cir. 2011)

- + J.S. created at home a fake MySpace page about her principal that included “shameful attacks.” She allowed some students to have access. Another student brought the website to the principal’s attention.
- + J.S. was suspended for 10 days.
- + Court assumes without deciding that *Tinker* applies.
- + School district had conceded no actual disruption, and court found no reasonable forecast thereof:
  - + Profile was clearly a joke; made private; principal not identified by name; no one took it seriously; not accessed at school; only brought to school at principal’s request; only “general rumblings”

## *Layshock v. Hermitage Sch. Dist.*, No. 07-4465 (3d Cir., 2011)

- + Layshock created a parody profile of his high school principal at his grandmother's house and posted on MySpace. He included a photo from the district's website. Not nearly as bad as J.S.'s. Friends had access. Principal's daughter found the profile. Layshock and other students accessed the profile at school.

# *Layshock v. Hermitage Sch. Dist.*, No. 07-4465 (3d Cir., 2011)

- + The court found that the school district violated the student's free speech rights. District officials were not justified in disciplining Layshock for speech that occurred off-campus after school hours because they had not established a sufficient nexus to the school.
- + The school district did not argue that Layshock should be punished under *Tinker's* substantial disruption standard, so it was left to argue only that it was justified under *Fraser* in disciplining him for the vulgar and offensive expression that occurred off-campus. The court found that the student's appropriation of photos from the district web site did not constitute entering the school.

# The School Districts are Petitioning the Supreme Court

- + NSBA will file an amicus brief in support of the school district in the J.S. case. In it, they will ask the Court to take the case because:
- + Tinker needs a remodel!
- + Courts are struggling to decide what legal test applies to online speech that originates off-campus but eventually affects/comes onto campus. *Tinker?* *Fraser?*
- + This type of speech is pervasive and schools need guidance from the Court.

## NSBA will point out:

- + Federal directives and state anti-bullying laws increasingly require schools to address cyberbullying – which often begins off-campus.
- + School officials should not HAVE TO regulate student off-campus online speech, but should be ABLE TO if they make a reasonable decision that it's appropriate.

# Cell Phone Searches

- + 4<sup>th</sup> Amendment -- Government searches of individuals must be reasonable.
- + In the school context, the Supreme Court said in *New Jersey v. T.L.O.* (1985) that the search must be:
  - + Justified at inception – reasonable grounds for suspecting search will turn up evidence a school rule has been violated
  - + Permissible in scope – measures adopted are reasonably related to the objectives of the search and not excessively intrusive

*Mendoza v. Klein Ind. Sch. Dist., No. 09-3895*  
*(S.D. Tex. Mar. 16, 2011)*

- + Principal observed group of students viewing cell phone. School policy said no using cell phones in school. Principal confiscated the phone and looked to see if it had been used during school hours. Then she continued the search, opening text message which contained a nude photo of the student. Student was transferred to alternative school for violating school's prohibition on "incorrigible behavior."
- + Federal magistrate decided search was based on reasonable suspicion, but exceeded its permissible scope. Principal did not need to search the contents of the texts to determine whether phone was used during school hours.



# THE SUPREME COURT RULED ON EMAIL/TEXT PRIVACY – SORT OF

- + *City of Ontario v. Quon* (June 17, 2010)
- + Claimed violations of Fourth Amendment right against unreasonable search and seizure because supervisors reviewed sexually explicit texts sent on department-issued pager. NSBA filed amicus brief.
- + Court decided the search was reasonable: conducted for legit work-related purpose, efficient and expedient, not excessively intrusive.
- + COURT DID NOT CLARIFY WHAT IS A REASONABLE EXPECTATION OF PRIVACY IN E-COMMUNICATIONS.

# BYOD – Bring Your Own Device

- + Don't forget the Fourth Amendment
- + This is IN-SCHOOL use, so First Amendment concerns are not as large as they would be for off-campus speech.
- + Address through discipline and acceptable use policies, and cross-reference.
- + Example: Allen Independent School District, TX has Student, Staff, Parent guide to BYOD program.

<http://www.allenisd.org/cms/lib/TX01001197/Centricity/Domain/1654/BYOD.pdf>

# CIPA- Children's Internet Protection Act

- + Back in the late 1990's, school districts dutifully installed filtering software onto computer systems to comply with the Children's Internet Protection Act and to get E-rate discounts. Now, districts that receives E-rate discounts are wondering whether to adjust the filter to accommodate staff requests to use Web 2.0 sites like Facebook to interact with their classes.
- + FCC issued a Report and Order on August 11, 2011 reflecting the statutory language changes made by the Protecting Children in the 21<sup>st</sup> Century Act.
- + [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0819/FCC-11-125A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0819/FCC-11-125A1.pdf)

# August 2011 FCC Report and Order

“Although it is possible that certain individual Facebook or MySpace pages could potentially contain material harmful to minors, we do not find that these websites are per se “harmful to minors” or fall into one of the categories that schools and libraries must block.

....

Declaring such sites categorically harmful to minors would be inconsistent with the Protecting Children in the 21st Century Act’s focus on “educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms, and cyberbullying awareness and response.”

# CIPA, cont'd

- CIPA requires E-rate recipients to certify that they have adopted and implemented an internet safety and that they are enforcing a policy that includes:
  - Monitoring minors' online activities;
  - Operation of technology protection measure against access by children **through school computers** to visual depictions that are:
    - 1) obscene; (2) child pornography; or (3) harmful to minors **as determined locally.**

**Same for adult access, but no #3.**

# CIPA, cont'd

- Safety and security of minors using e-mail and other electronic communications. Internet safety policy must address, among other things:
  - the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications
- Access by minors to inappropriate matter
- Unauthorized access, “hacking,” and other illegal activities by minors online;
- Unauthorized disclosure, use and dissemination of personal information regarding minors; and
- Measures designed to restrict minors’ access to harmful material.

## CIPA, cont'd

- + FCC's new rule adopts the statutory language. A school district's "Internet safety policy must also include monitoring the online activities of minors and must provide for educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response."
- + Although a school's Internet safety policy may include the development and use of educational materials, the policy itself does not have to include such materials. The FCC has declined to define "social networking" or "cyberbullying."

# Universal Service Administrative Co.

- + By July 1, 2012, amend your existing Internet safety policy (if you have not already done so) to provide for the education of minors about appropriate online behavior, including interacting with other individuals on social networking sites and in chat rooms, and cyberbullying awareness and response.
- + Resources available to assist in process of educating students about cyberbullying, etc. – [OnGuardOnline.gov](http://OnGuardOnline.gov).
- + Schools do not need to hold a new public meeting or hearing on their Internet safety policy unless state/local rules require it.



# Universal Service Administrative Co.:

- + “Minor” is defined as it is in CIPA: any individual who has not attained the age of 17 years. This is true even though the definition of “minor” varies from state to state.
- + Local school authorities must determine what matter is inappropriate for minors. Specific social networking sties are not automatically considered “harmful to minors” or assumed to fall into one of the categories that schools must block.
- + FCC plans to seek public comment in a separate proceeding on whether CIPA requirements apply to use of portable devices owned by students when used to obtain Internet access funded through E-rate.

# ACLU's "Don't Filter Me" Campaign

- + ACLU has issued letters to several high schools in those states demanding that the schools stop using web filters to eliminate access to websites that support the lesbian, gay, bisexual, and transgender (LGBT) communities.
- + In August, 2011, ACLU filed a lawsuit in federal court on behalf of four gay rights advocacy groups against Camdenton R-III School District (CR-IIISD) in Missouri alleging that the websites of the four plaintiff organizations are being blocked by CR-IIISD.

# ACLU's "Don't Filter Me" Campaign, cont'd

## + The Missouri suit:

- + Claims the school district's custom-built filtering software blocks through its "sexuality" category all LGBT-supportive information, including many websites that are not sexually explicit in any way.
- + Seeks an injunction prohibiting CR-IIISD from continuing to use Internet filtering software that blocks access to LGBT-supportive viewpoints while permitting access to anti-LGBT viewpoints.
- + These are First Amendment arguments.



# Bonus

# Cloud Computing

Q: What is “cloud computing?”

A: Internet-based access to software programs, applications, and data.

Q: What are some of the benefits?

A: Store and process information using someone else’s machines (less staff); upgrade without maintaining physical hardware (no new server costs); process information on platforms not otherwise compatible (use any operating system you like); access from any Internet connection.

Adapted from materials prepared by Carol Simpson, Ed.D., Associate  
Schwartz & Eichelbaum Wardellmahl and Hansen, P.C.  
Plano, Texas

# Cloud Computing

- + Issues to consider:
  - + Data location
  - + Data security
  - + Subcontractors
  - + Data ownership
  - + Litigation holds
  - + Data retention and access
  - + Product or service? Negotiate sharing of the risk.
  - + Cloud + locally based services for critical and confidential data.
  - + Private clouds

Adapted from materials prepared by Carol Simpson, Ed.D., Associate  
Schwartz & Eichelbaum Wardellmahl and Hansen, P.C.  
Plano, Texas

# ED on data security

- + National Center for Education Statistics launched a new series of technical briefs noting best practices of data security and privacy protections. ED says the briefs are intended to serve as resources for practitioners to consider adopting and/or adapting to complement the work they are already doing.
- + Three briefs have been released and are posted at:
- + <http://nces.ed.gov/programs/Ptac/Toolkit.aspx?section=Technical%20Briefs>

# Guidance from ED on school surveillance videos

- + Should be coming in 1-2 months. Look for it to answer:
  - + Whether video surveillance is different from written records. Tentative: yes; it's generally not an education record.
  - + Whether video surveillance becomes an education record when it captures student wrong-doing. Tentative: only that portion of the video is that student's education record.
  - + Whether the video is the education record of each student involved in an altercation. Tentative: Yes. Because a video can't be easily redacted, the video may be viewed by any parent whose child was involved in the altercation. A video is not the education record of students who are merely present when an altercation takes place.
  - + AND MORE!



# E-readers

- + In 2010, DOJ and ED issued a Dear Colleague letter to college and university presidents expressing the position that it is a violation of federal law (ADA Titles II/III and 504) to use electronic book readers in classroom setting if they are not accessible to students with visual impairments.  
DOJ had entered into settlement agreement with colleges and universities participating in a pilot study with Amazon.com using Kindle DX.
- + <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100629.html>
- + <http://www2.ed.gov/about/offices/list/ocr/docs/504-qa-0100629.html>

## Does the Fed's E-reader guidance apply to Elementary/Secondary Schools?

- + Yes. In May 2011, ED's Office for Civil Rights released a FAQ and DCL made that clear.
- + Educational institutions cannot require use of book readers in classroom setting if the readers are not fully accessible to individuals with visual impairments (including blindness) unless:
- + Accommodations/modifications are provided that allow them to receive all the educational benefits provided by the technology in an equally effective and integrated manner.
- + <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201105-ese.pdf>

# ED's E-reader FAQ for Elementary/Secondary Schools

- + “Functional definition” of accessibility in the June 2010 DCL is what OCR will use:
- + Students with visual impairments must be afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students.
- + This may not mean identical ease of use, it must ensure equal access – “substantially equivalent ease of use.”
- + <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-ebook-faq-201105.html>

# School Law and Technology 2011

“We can’t allow science to undo its own good work.”

-- Aldous Huxley, *Brave New World*, Ch.

# DISCLAIMER

This presentation does not constitute legal advice, nor does it create an attorney client relationship.

It contains general recommendations and should not be relied upon for any specific purpose without consultation with legal counsel or other professionals and in the context of specific facts and circumstances.

